

Department of Justice Symposium February, 2010
Workshop 4A: "Beyond Counting Cases: Workloads for Crime Reduction."
Moderator: Caroline Cooper

Panelist: Nicholas L. Chiarkas, Wisconsin State Public Defender.

Opening Comment:

We, government lawyers, have always embraced the wisdom that it's not what you get for the work you do; it's what you become by doing it. Being one of your colleagues is reward enough; being invited to participate in this historic conference is an honor that is quite moving.

I've long believed that those who have less in life should have more in law. Maybe that sounds a bit pie-in-the-sky naïve, but certainly you would agree that they should have an equal measure of law – as promised by the last three words of our Pledge of Allegiance – yet we know too well that they do not.

Ten years ago a judicial study found that Wisconsin state public defenders provided high quality representation to their clients. Before we could finish cheering the head of Wisconsin budget shop responded, “‘Quality’ is not required, the public defenders must lower their standard to ‘adequate’ and save money.” We, of course, did not, have not and will not.

In the spring of 2009, a bill that would have provided greater access to Wisconsin’s state public defenders by some of our poorest citizens – those with a total income of \$81 a week – was vetoed. The veto message read in part, “I remain committed to ensuring ‘adequate’ representation of individuals with limited income.” It might sound somewhat overly sensitive but you could sense a drop in spirit ripple through our agency.

So it was about this same time that Attorney General Eric Holder, on June 24, 2009, addressed the American Council of Chief Defenders in Washington, D.C. He stated, “When I took the oath of office as Attorney General, I swore to support and defend the Constitution of the United States. Supporting and defending the Constitution includes, in my view, a responsibility to serve as guardians of the rights of all Americans, including the poor and underprivileged.”

I tell you as word spread of Attorney General Holder’s comments you could feel the resurrection of morale throughout the Wisconsin state public defender agency.

The veto denied Wisconsin’s poorest citizens SPD representation, and was a disappointing departure from Attorney General Holder’s commitment to justice for all. Denying SPD representation to those whose income exceeds \$114 each week cannot be reconciled with common and fundamental ideas of fairness. Moreover, it subjects Wisconsin’s poorest citizens to increased dangers of conviction merely because of their poverty.

This issue is not about public defenders, prosecutors, policy or politics. It is about Wisconsin’s poorest and most disenfranchised citizens reaching for justice. This was a profoundly sad, cynical, and disheartening outcome for Wisconsin. But know this: the Wisconsin State Public Defender agency has continued to fight to bring the promise of Gideon to every Wisconsin citizen, no matter how poor, no matter how powerless. And, as I write these comments a

separate bill raising eligibility is again making its way through the Wisconsin legislature and back to the Governor's desk with cautious optimism.

THE WISCONSIN STATE PUBLIC DEFENDER AGENCY

The Wisconsin State Public Defender's Office (SPD) is an independent state agency charged with providing legal representation to indigent clients in criminal and certain civil cases. The SPD employs approximately 550 staff in 38 local offices and provides defense services in all 72 Wisconsin counties. In addition, the SPD certifies over 1,000 private bar attorneys to provide defense services in conflict cases and other cases that exceed the staff's capacity. In fiscal year 2009, the SPD opened 142,879 cases.

Commitment to Mission

Under the leadership of Nicholas Chiarkas, the SPD is viewed as a leader locally, nationally, and internationally. In accordance, the SPD measures itself against its far-reaching mission:

To promote justice throughout Wisconsin by providing high-quality and compassionate legal services, protecting individual rights, and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

The agency's achievements include the following:

Award-winning management, staff, & agency

A number of the SPD's management and staff have been recognized for their legal expertise, management abilities, leadership qualities, and community contributions. The following are among the recent awards received:

- American Bar Association's Dorsey Award
- American Bar Association's Living Hall Juvenile Justice Award
- Law & Politics' Super Lawyers
- Wisconsin Law Journal's Leader In The Law
- American Society for Public Administration's Administrator of the Year
- Wisconsin Law Journal's Unsung Heroes In The Law

In addition, the agency itself has also been recognized for its management and leadership excellence. The SPD is a three-time winner of a Wisconsin Forward Award, which is based on the nationally-known Malcolm Baldrige Quality National Quality Award.

The SPD served as the model for Israel's National Public Defender Program. In addition, the SPD served in part as a model for Japan's reorganization of its defense function.

Justice Without Borders

Because of the demand for Nicholas Chiarkas' counsel and expertise, the SPD helped create a non-profit entity called Justice Without Borders. Justice Without Borders has worked with countries including Israel, Japan, Italy, New Zealand, India, Trinidad and Tobago, and the Philippines, to assist in the creation, expansion, or improvement of their indigent defense programs. In recent years, Nicholas Chiarkas was asked to help several state and local U.S. programs, including New Orleans and Michigan.

Professional Development

The SPD provides high-quality training to both staff and to private bar, through programs ranging from large conferences to small workshops. Among the annual programs is a week-long Trial Skills Academy that features nationally-recognized faculty and attracts participants from other states. The SPD trains on issues critical to a productive workplace, such as professionalism, cultural diversity, and compassion fatigue, in addition to sessions on advocacy-related skills and knowledge.

Client-Centered Culture

The SPD emphasizes the overarching goal of assisting clients, not only by providing high-quality legal representation, but also by treating clients with courtesy and respect. The SPD asks clients for feedback through a satisfaction survey, which consistently shows a high level of satisfaction with SPD service and personnel.

Working in our communities

State Public Defender Nick Chiarkas is a long-time believer in contributing to local community activities and initiatives, especially those that focus on helping children. Accordingly, the agency is pro-active in talking to elementary and high schools (with the message, "The best defense is no offense"), rotaries, colleges, senior citizen centers, and the like. In fiscal year 2009, the SPD reached almost 10,000 citizens with its outreach efforts.

Recognizing the work in our communities

The SPD shines a spotlight on other individuals and organizations that go above and beyond in our communities to help our children from ever entering the justice system. The SPD formally

recognizes these efforts through its *Wisconsin Cares About Kids Awards*, which are bestowed under the Governor's sponsorship as well as the agency's.

Treatment courts

The SPD is a long-time supporter of treatment-orientated approaches. Aside from participating in the development and operations of drug, alcohol, and mental-health treatment courts throughout the state, the SPD was a primary facilitator of the Wisconsin Veterans Intervention Program, which includes one of the country's first veterans treatment court. The SPD has taken the lead in recognizing and measuring the work that agency staff perform as representatives of the indigent-defense community on teams that operate treatment courts.

Wisconsin State Public Defender: Attorney Caseloads & Workloads

Overview

We do not have a quota or a limit on # of cases that an individual attorney can handle; in fact, we consistently ask attorneys to handle as many cases as they ethically and competently can.

However, in practice we have been able to keep staff workloads relatively stable, although definitively challenging.

Main reasons for this stability are 1) statutory caseload standard; and 2) mixed system of staff and private bar.

Our statute provides caseload *standards*(not caps, not quotas, not limits) that are used to measure the productivity of our staff attorneys, primarily from the point of view of the taxpayers who fund the agency. Statute looks at the agency as an aggregate, not at the level of the individual attorney.

We have 289 staff positions in our trial division, and staff handle about 55-60% of the cases. The remaining cases, including cases that we determine to be conflicts of interest, go to private attorneys who are certified to accept appointments.

Our agency is the appointing authority: we complete the financial screening of applicants and, for those who qualify, we appoint either a staff attorney or a private attorney.

Statute

977.08(5)(a) The purpose of this subsection is to provide standards for use in budgetary determinations.

977.08(5)(bn) Except as provided in par. (br), any of the following constitutes an annual caseload standard for an assistant state public defender in the subunit responsible for trials:

1. Felony cases not specified in subd. 1m.: 184.5.
 - 1m. First-degree intentional homicide cases: 15.
 - 1r. Cases representing persons under s. 980.05: 15.
2. Misdemeanor cases: 492.
3. Cases not covered under subd. 1., 1m., 1r. or 2.: 246.

977.08(5)(br) Beginning on July 1, 2000, the state public defender may exempt up to 10 full-

time assistant state public defenders in the subunit responsible for trials from the annual caseload standards under [par. \(bn\)](#) based on their need to perform other assigned duties.

Interpretation of Statute

Used for budgeting purposes to estimate cost of private-bar appointments (if staff handle the statutory volume, the balance go to the private bar, and the cost can be estimated)

If overall number of cases goes up, the increase largely goes to the private bar (unless new staff positions are created)

Numbers in the statute= 123% of 1972 national standards

Statute has been amended 3 times (twice numerically and once to add a case type)

Does not specifically address administrative issues like vacant positions, withdrawals from cases

Exemption of 10 supervisor positions does not restrict agency from having additional supervisory positions (we have 38 offices)

Management Issues

Definitions of Case Types: we have about 25 separate case types that we track and assign weights to internally)

Internal Case Weights (based in large part upon average time per case, although we also look at the statutory weights in deciding what the internal weights should be)

Individual Caseload Assignments (regional managers have discretion in assigning individual caseloads as long as the region achieves the budgeted caseload; may consider experience level, travel time, other work responsibilities, other factors)

Staff Culture (some staff view the assigned caseload as a quota: marathon analogy-you mean you've just run 26.2 miles and you can't run another _ mile???)

External Scrutiny (especially in tight budget times, we have been asked about raising the statutory numbers, and it did happen in 1995)

Measuring Workload (capacity to represent competently and ethically; challenging for a supervisor to decide who can take on more cases; different attorneys have different abilities and levels of dedication)

Intake, Supervisory Duties, Training, Treatment Courts, etc. (managers may consider other workload duties in assigning individual caseloads; we hope that courts and prosecutors will join us in explicitly considering and measuring work that reduces the number of cases formally charged)

Wisconsin State Public Defender Case Weights

Case Type	Internal Case Weight	Statutory Case Weight
Homicide	20.00	12.30
Homicide co-chair	10.00	6.15
Sexual predator petition	20.00	12.30
Sexual predator co-chair	10.00	6.15
Termination of parental rights	5.00	0.75
Other life sentence	4.00	1.00
Sexual predator post-disposition	3.50	12.30
Class A-C felony	3.00	1.00
Other felony	1.00	1.00
Protective placement	1.00	0.75
Juvenile waiver	1.00	0.75
Felony delinquency	0.90	0.75
Revocation	0.65	0.75
Other juvenile proceeding	0.55	0.75
Misdemeanor (non-traffic)	0.50	0.375
Traffic misdemeanor	0.48	0.375
Commitment	0.45	0.75
Special proceeding	0.35	0.75

Allocation of Workload Points for Specialty Court **FY 09**

Attorney	Office	Court	Points
Liesl Nelson	Hudson	St Croix drug/OWI and Pierce drug	60
John Kucinski	Hudson	Polk drug	25
John Hinde	Rice Lake	Barron drug	40
Dana Smetana	Eau Claire	EC drug/AIM	45
Sonia Anderson	Eau Claire	EC AIM	24
Mary Liedtke	Eau Claire	EC MH	16
John Manydeeds	Eau Claire	Chippewa drug	12
Vince Rust	La Crosse	La X drug	50
David Dickmann	St. Point	Wood drug	30
Emily Nolan-Plutchak	St. Point	Wood drug	18
Catherine Dorl	Madison	Dane drug	20
Bill Poss	BRF	Jackson drug	18
Mike McQuillan	BRF	Trempeleau drug	12
Elizabeth Wright	La Crosse	La X OWI	24
Patricia O'Neill	La Crosse	La X OWI	24
Jean La Tour	Waukesha	Waukesha OWI	24
John Kuech	Oshkosh	Winnebago drug	18
Eric Nelson	Rock	Rock drug	20
Mark Perrine	Ashland	Ashland juve drug	18
Martin Jarvis	Spooner	Wash/Burnett drug	20
Gerald Wright	Spooner	Sawyer drug	20
Patrick O'Neill	Superior	Douglas drug	18
Adrienne Moore	Racine	Racine drug	12
Carolyn Delery	Racine	Racine drug	12

NICHOLAS L. CHIARKAS

Nicholas L. Chiarkas is the Director of Wisconsin's State Public Defender Agency. Under his leadership, the agency received three consecutive awards for excellence. In addition, he is the founder of *Justice Without Borders*, is an adjunct professor of law at the University of Wisconsin Law School, and was a visiting lecturer in law at Justus-Liebig-Universität, Gießen, Germany.

Previously Mr. Chiarkas served as the Deputy Chief Counsel and Research Director to the President's Commission on Organized Crime; Deputy Chief Counsel to the United States Senate Permanent Subcommittee on Investigations; Professor of Law; Professor of Criminology; and a New York City Police Officer.

Mr. Chiarkas has a Doctorate and Master's degrees from Columbia University; a law degree from Temple University; a Master's and Bachelor's degree in Criminal Justice from the City University of New York; a Post Graduate Certificate in Computer Systems Analysis from New York University. And, was a Pickett Fellow at the John F. Kennedy School of Government at Harvard University.

Mr. Chiarkas worked with Israel in establishing and enriching Israel's first National Public Defender Agency; with Japan as it introduced a public defender system; with the U.S. Department of Justice in examining indigent defense in the United States, including New Orleans following Katrina; and with the NLADA in assessing defense services in Oakland County, Michigan, and Hamilton County, Ohio.

In 1996, Mr. Chiarkas became the nation's first public defender to receive the "Law Enforcement Commendation Medal" awarded by The Sons of the American Revolution. In 1999 and again in 2000, Governor Thompson recommended to the National Governor's Association that Nick be named the National Public Executive of the Year. In 2000, the Wisconsin Chapter of the American Society for Public Administration named Nick Administrator of the year. In 2001 Nick was elected to the Alumni Executive Council of the Kennedy School of Government at Harvard University, and to the Board of Directors for Wisconsin Forward Award, Inc. In 2002, Nick received the Outstanding Professional Award by the Wisconsin Law Foundation, and was named Vietnam Veteran of the Year by Wisconsin Vietnam Veterans of America. And in 2009 Nick was the Dorsey Award winner for outstanding public defender by the Government & Public Lawyer Division of the ABA.

Among Mr. Chiarkas' publications are five law books, three books dealing with Criminal Organizations and Enterprises, two articles, translated into Japanese, published in Japan by the Japan Federation of Bar Associations on "Public Defenders" and "Legal Ethics." And he just completed his first novel "Weepers."

Mr. Chiarkas grew up in the Al Smith housing projects on Manhattan's poverty stricken Lower East Side. When Nick was in the fourth grade, his mother was told by the Principal of P.S.#1, that, since Nick was unlikely to ever complete high school and would certainly never go to college, she should gear him toward a simple and secure vocation.